Ahmad bin Abu Bakar v Public Prosecutor

HIGH COURT (JOHOR BAHRU) — CRIMINAL APPEAL NO 41–27 OF 1997
ABDUL MALIK ISHAK J
4 AUGUST 1998

Criminal Procedure *— Trial — Bias — Transfer by one magistrate to another — Test to be applied — 'Real likelihood of bias'*

Criminal Procedure *— Plea of guilty — Statement of facts — Whether prosecution should tender statement of facts when accused pleads guilty to charge — Mandatory procedural requirements — Criminal Procedure Code (FMS Cap 6) s 173(b) & m(2)*

The appellant was produced before magistrate 'A' in the magistrate's court and pleaded guilty to an amended charge of possession of heroin. The record of appeal showed that magistrate 'A' had recorded that the amended charge was read, explained and understood by the appellant and that the appellant had understood the nature and consequences of his plea. After the appellant had admitted the statement of facts, magistrate 'A' found the appellant guilty and convicted him accordingly. The prosecuting officer thereafter informed the court that the appellant had five previous convictions and that he was a persistent drug offender, and left sentencing to magistrate 'A' to decide. However, instead of sentencing the appellant, magistrate 'A' transferred the case directly to magistrate 'B' on the ground that he felt cheated that he was no told about the appellant's previous convictions. When magistrate 'B' received the appellant's case, she promptly caused the amended charge to be read and explained to the appellant, to which the appellant once again pleaded guilty. Magistrate 'B' recorded the appellant's plea and that the appellant had understood the nature and consequences of his plea, and thereafter proceeded to convict the appellant. Magistrate 'B' sentenced him to five years imprisonment from the date of sentencing and in addition, ordered a one year police supervision. Magistrate 'B' did not however direct the prosecution to give a summary of the facts. The appellant appealed.

Held, allowing the appeal and quashing both the conviction and sentence:

(1) In an application to set aside a decision on the ground of biasness, it is not necessary to prove that the judicial officer was biased. It is sufficient to show that there is a real likelihood of bias or for that matter, a reasonable person advised of the circumstances might reasonably suspect that the judicial officer was unable to produce the kind of impartiality and detachment which was expected of him. The correct test would be to ascertain whether there is an appearance of bias and not whether there is actual bias. Applying these principles, when magistrate 'A' wrote to magistrate 'B', there was an appearance of bias on the part of magistrate 'A' and the

transfer of the appellant's case to magistrate 'B' was wholly justifiable in the circumstances (see p 398C–D, H); *Maleb bin Su v PP, Cheak Yoke Thong v PP* [1984] 1 MLJ 311 followed and *Manokaran & Anor v PP* [1979] 1 MLJ 262 distinguished.

(2) Magistrate 'B' should have proceeded as did magistrate 'A' when the appellant was produced before her on that day. Magistrate 'B' should have directed the prosecution to give a summary of the facts once again before her. The procedure to be followed by a magistrate before sentencing an accused is set out in the Criminal Procedure Code (FMS Cap 6) ('the CPC'), in particular s 173(b) and (m)(2). These procedural requirements are mandatory and once an accused person appears before the magistrate, the magistrate has no choice but to proceed with the trial in accordance with the CPC. Therefore, failure by magistrate 'B' to record the appellant's admission or denial of the facts was fatal (see pp 401E–F, 402A); *Lee Weng Tuck & Anor v PP* [1989] 2 MLJ 143 followed.

[**Bahasa Malaysia summary**

Perayu dikemukakan di hadapan majistret 'A' di mahkamah majistret dan mengaku salah terhadap tuduhan terpinda milikan heroin. Rekod rayuan menunjukkan bahawa majistret 'A' telah merekod tuduhan terpinda yang dibacakan, dijelaskan dan difahami oleh perayu dan perayu memahami jenis dan akibat daripada pengakuannya. Setelah perayu mengaku pernyataan fakta-fakta, majistret 'A' mendapati perayu bersalah dan menjatuhkan hukuman yang setimpal. Pegawai pendakwa kemudiannya memberitahu mahkamah bahawa perayu mempunyai sabitan terdahulu dan sering melakukan kesalahan berkaitan dengan penyalahgunaan dadah dan meletakkan hukuman di tangan majistret 'A'. Akan tetapi, majistret 'A' telah memindahkan kes tersebut kepada majistret 'B' tanpa terus menjatuhkan hukuman ke atas perayu atas alasan beliau rasa tertipu kerana tidak diberitahu sabitan terdahulu perayu. Apabila majistret 'B' menerima kes perayu, beliau dengan segera membaca dan menjelaskan tuduhan terpinda itu dan sekali lagi perayu mengaku bersalah. Majistret 'B' merekodkan jawapan perayu. Beliau turut merekodkan bahawa perayu memahami jenis dan akibat daripada pengakuannya. Kemudian, majistret 'B' menjatuhkan hukuman 5 tahun pemenjaraan dari tarikh hukuman dan berserta itu, memerintahkan setahun di bawah pemerhatian polis. Akan tetapi, majistret 'B' tidak mengarahkan pihak pendakwa untuk memberi ringkasan fakta-fakta. Perayu kemudiannya membuat rayuan.

Diputuskan, membenarkan rayuan dan membatalkan sabitan dan hukuman:

(1) Dalam permohonan mengetepikan keputusan atas alasan berat sebelah, adalah tidak perlu untuk membuktikan bahawa pegawai kehakiman itu sebenarnya berat sebelah. Adalah memadai untuk

menunjukkan bahawa terdapat kemungkinan sebenar kemudaratan bagi perayu atau ke atas seorang yang waras yang telah dinasihati atas situasi di mana adalah disyaki pegawai kehakiman tidak dapat menunjukkan sifat tidak berat sebelah. Ujian yang betul adalah untuk menentukan sama ada terdapat kemungkinan berat sebelah dan bukan sama ada terdapat berat sebelah sebenarnya. Menggunakan prinsip-prinsip ini, terdapat kemungkinan berat sebelah apabila majistret 'A' menulis kepada majistret 'B' dan pemindahan kes perayu ke majistret 'B' adalah berjustifikasi dalam keadaannya (lihat ms 398C–D, H); *Maleb bin Su v PP, Cheak Yoke Thong v PP* [1984] 1 MLJ 311 diikut dan *Manokaran & Anor v PP* [1979] 1 MLJ 262 dibeza.

(2) Majistret 'B' sepatutnya meneruskan kes seperti majistret 'A' apabila perayu di bawa ke hadapan beliau pada hari itu. Majistret 'B' sepatutnya memberi petunjuk kepada pihak pendakwa untuk memberi semula ringkasan fakta-fakta di hadapan beliau. Prosedur-prosedur yang patut dipatuhi oleh majistret-majistret sebelum menjatuhkan penghakiman ke atas tertuduh adalah disenaraikan di dalam Kanun Acara Jenayah (NMB Bab 6) ('KAJ') khususnya s 176(6) dan (m)(2). Prosedur-prosedur tersebut adalah mandatori dan apabila tertuduh berhadapan dengan majistret, beliau (majistret) tiada pilihan melainkan untuk meneruskan pembicaraan mengikut KAJ. Oleh itu, kegagalan majistret 'B' untuk merekod pengakuan atau penafian fakta-fakta perayu adalah memudaratkan (lihat ms 401E–F, 402A); *Lee Weng Tuck & Anor v PP* [1989] 2 MLJ 143 diikut.]

Notes

For a case on bias, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2862.

For cases on statement of facts, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1803–1808.

Cases referred to

Abdul Kadir bin Abdul Rahman v PP [1984] 1 MLJ 80 (refd)
Chen Chong & Ors v PP [1967] 2 MLJ 130 (refd)
Chin Ban Keat v R [1949] MLJ 297 (refd)
Chua Ah Gan v PP [1958] MLJ liv (refd)
Hassan bin Dollah v PP [1996] 5 MLJ 285 (refd)
Law v Chartered Institute of Patent Agents [1919] 2 Ch 276 (refd)
Lee Weng Tuck & Anor v PP [1989] 2 MLJ 143 (folld)
Lian Kian Boon v PP [1991] 1 MLJ 51 (refd)
Maleb bin Su v PP, Cheak Yoke Thong v PP [1984] 1 MLJ 311 (folld)
Manokaran & Anor v PP [1979] 1 MLJ 262 (distd)
Metropolitan Properties Co (FCG) Ltd v Lannon [1969] 1 QB 577 (refd)

Mok Swee Kok v PP [1994] SLR 140 (refd) A
Nadeson v PP [1966] 1 MLJ 63 (refd)
PP v Abdul Aziz [1978] 2 MLJ 155 (refd)
PP v Leng Chow Teng [1985] 1 MLJ 229
PP v Leonard [1960] MLJ 13 (refd)
R v Liverpool City Justices; ex p Topping [1983] 1 All ER 490 (refd)
R v Sussex Justices, Ex p McCarthy [1924] 1 KB 256 (refd) B
Subramaniam & Anor v PP [1976] 1 MLJ 76 (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 12(2), (3), 39B C
Criminal Procedure Code (FMS Cap 6) s 173(b), (m)(2)
Subordinate Courts Rule 1948 s 104

Zahar Ngah (*RR Mahendran & Co*) for the appellant.
Teo Say Eng (Deputy Public Prosecutor) for the respondent.

D

Abdul Malik Ishak J: This appeal ought to interest and stir the imagination of all the magistrates across the nation. This was a case where magistrate 'A' of the Johor Bahru Magistrate's Court transferred the appellant's case to magistrate 'B' of the Johor Bahru Magistrate's Court in mid-stream, and the sentencing of the appellant was carried out by magistrate 'B' on the same day. It appears to be a normal exercise under s E 104 of the Subordinate Courts Act 1948 which enacts as follows:

> A President of a Sessions Court or a Magistrate shall have jurisdiction in any criminal cause or matter, whether or not he has jurisdiction finally to hear and determine the same, to order, in any case where the interests of justice so require, that the cause or matter be transferred to any other Sessions Court or F Magistrates' Court, as the case may be, which in his opinion has jurisdiction to hear and determine the same, and the same may be continued in that other Court accordingly:
>
> Provided that nothing in this section shall be deemed to confer jurisdiction on any court to which a proceeding is so transferred, if that court would not otherwise have jurisdiction in respect thereof. G

but on closer scrutiny it raises interesting points of law. The appellant was charged for possession of 0.81gm of heroin on 18 September 1996 at about 11am at No 49, Jalan Kupang 2, Skudai Kiri, Tampoi, Johor Bahru in the district of Johor Bahru, an offence under s 12(2) of the Dangerous Drugs Act 1952 ('the Act') punishable under s 12(3) of the same Act. This was an H amended charge. The appeal record indicated that the appellant was initially charged for trafficking 20gm of heroin under s 39B of the Act. On 2 April 1997, the appellant was produced before magistrate 'A' and that amended charge was read to the appellant in open court bearing in mind that the appellant should plead guilty by his mouth and not through his counsel or advocate (*Abdul Kadir bin Abdul Rahman v PP* [1984] 1 MLJ 80). I The appeal record showed that magistrate 'A' had acted prudently when he recorded that the amended charge was read, explained and understood by

A the appellant. Since the latter had pleaded guilty, magistrate 'A' proceeded to record that the appellant understood the nature and consequences of his plea (*Chin Ban Keat v R* [1949] MLJ 297; *Chua Ah Gan v PP* [1958] MLJ liv; and *Subramaniam & Anor v PP* [1976] 1 MLJ 76). Thus far, magistrate 'A' had applied the correct procedure. As Roberts CJ said in *Hassan bin Dollah v PP* [1996] 5 MLJ 285 particularly at p 291:

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> In *Heng Kim Khoon v PP* [1972] 1 MLJ 30, Sharma J referred, while emphasizing the need to be careful before accepting a plea, to the use of the following formula — 'Charge read over and explained to the accused and understood by him. Pleads guilty. Understands the nature and consequences of his plea.'
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> C I see nothing wrong in something of this nature appearing in the record. If it does, it should be presumed that the magistrate did explain to the defendant the nature and consequences of the plea of guilty which he had made.
>
> There is no set formula. It is sufficient if the record shows that the defendant does understand the nature and consequences of his plea and that
> D this has been explained to him by the magistrate.

The statement of facts marked as exh P2 was then read, explained and admitted by the appellant in the presence of magistrate 'A'. In fact, other exhibits were also tendered and marked before magistrate 'A'. Thus, from the appeal record, it can be discerned that the police report, subject matter
E of the offence and the chemist report were all tendered and marked as exhs P3, P4 and P5 respectively. Even the appellant's previous convictions record was marked as exh P6. All these were done meticulously by magistrate 'A'. Section 173(b) of the Criminal Procedure Code (FMS Cap 6) ('the CPC') enacts as follows:

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> The following procedure shall be observed by Magistrates in summary trials:
>
> (a) ...
>
> (b) If the accused pleads guilty to the charge, whether as originally framed or as amended, the plea shall be recorded and he may be convicted thereon ... .
>
> G Provided that before a plea of guilty is recorded the Court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him.

and the proviso certainly requires magistrate 'A' to '... ascertain ...' that all the requirements thereto have been complied with (*PP v He King Kiok &*
H *Anor* [1992] 2 MLJ 781). It appears from the appeal record that the statement of facts was typed in a brief form following closely the guidelines as stipulated in *Mok Swee Kok v PP* [1994] 3 SLR 140. I venture to say that in a case where an accused person pleads guilty, a summary or the facts of the case must be presented by the prosecutor in oral or written form. The length of the narrative of that summary would be dependent on the nature
I of the charge and the seriousness of the charge. Those summary of the facts must certainly be confined to facts which the prosecution is able to prove and establish the charge (*Chen Chong & Ors v PP* [1967] 2 MLJ 130; *Abdul*

Kadir bin Abdul Rahman v PP and *Lian Kian Boon v PP* [1991] 1 MLJ 51). It is salutary to remember that magistrates should not entertain the prosecution's request of 'facts as per charge' when confronted with a plea of guilt by an accused person (*Nadeson v PP* [1966] 1 MLJ 63 and *PP v Abdul Aziz* [1978] 2 MLJ 155).

Now, reverting back to the mainstream of the appeal, magistrate 'A' then proceeded to accept the plea of guilty by the appellant to the amended charge and convicted him accordingly. In short, magistrate 'A' recorded the plea of guilty after the appellant had pleaded guilty and after the amended charge had been read and explained to him. Magistrate 'A' too, from the appeal record, accepted the plea of guilty after he was satisfied that the appellant understood the nature and consequences of his plea. All these were done meticulously by magistrate 'A' and after the appellant had admitted the statement of facts in exh P2 (*PP v Abdul Aziz* and *Lian Kian Boon v PP*), magistrate 'A' found him guilty and convicted him accordingly. Obviously magistrate 'A' had no choice but bound to accept the appellant's plea of guilty. The appellant, who was unrepresented before magistrate 'A' was quite well versed with the court procedure bearing in mind that he had five previous convictions. As a veteran in court, the appellant then proceeded to mitigate for himself. The prosecuting officer emphasized the five previous convictions of the appellant, a persistent drug offender, and then left sentencing to magistrate 'A' to decide. What magistrate 'A' did next was simply to state as reflected at p 14 of the appeal record:

'majistret lain'

and this meant that magistrate 'A' did not proceed to sentence the appellant but rather transferred the appellant's case direct to magistrate 'B', a lady magistrate. In her well considered written decision, magistrate 'B' adverted to the existence of a letter marked as 'X' from magistrate 'A' which implored her to take over the appellant's case. This was not a love letter. It was a letter that has brought forth scurrilous attack on magistrate 'A'. It was alleged that when magistrate 'B' took over the appellant's case, she was biased on account of that letter marked 'X'.

Interestingly that letter marked 'X' was enclosed in a government envelope bearing the caption 'Urusan Seri Paduka Baginda' and the envelope was addressed specifically to me in my capacity as a judge of the High Court at Johor Bahru. When the written decision of magistrate 'B' was circulated to counsel for the appellant, it was without that letter marked 'X' and this prompted counsel for the appellant to write to the deputy registrar and request for a copy of that infamous letter. This was acceded to and finally that letter became part and parcel of the appeal record and it was referred to in the petition of appeal. As I said, only the envelope that contained that letter was addressed to me but the letter was addressed to magistrate 'B'. It now falls on me to reproduce that letter in this judgment. It must be emphasized that the reproduction of that letter is not a reflection of the character of both these two magistrates. I am happy to say that they have excelled in their chosen professions and I have no doubt that they

would propel further in the years ahead. For them, the sky is the limit. Be that as it may, that letter was worded thus:

> 'Magistrate 'B',
>
> Tolong I jatuhkan hukuman kes ini sebab tadi ada PC mahkamah jumpa minta tolong. PC 'Z' beritahu I Okt x ada rekod & setelah PO kemukakan rekod lalu, I rasa sakit hati pasal kena tipu.
>
> I x pernah janji apa-apa dengan dia, PC ni pun I x kenal sangat. Untuk berlaku adil I x boleh jatuh hukum sebab hati tengah sakit, jadi transfer pada U. U timbanglah hukum yang sesuai.
>
> Sorry yea Majistret 'B'!
>
> tt 2 April 1997

I have purposely omitted the name of the magistrate in the letter marked 'X' and substituted her name by simply labelling her as magistrate 'B' in order to maintain anonymity. The name of the police constable has also been omitted and in its place, that police constable has been referred to as PC 'Z'. From the bar, I was told that the words 'I x pernah' meant 'I tak pernah'. The tenor of this letter showed the impeccable character and the right judicial temperament of magistrate 'A'. That letter showed an interference by a police constable and when magistrate 'A' realized that the appellant had a string of previous convictions, he felt cheated and hurt and decided rightly to transfer the case to magistrate 'B'. In that state of mind, had magistrate 'A' proceeded to sentence the appellant, biasness would have crept into the judicial process. On the subject matter of biasness, Hashim Yeop Sani FJ sitting in the High Court, had this to say in *Maleb bin Su v PP, Cheak Yoke Thong v PP* [1984] 1 MLJ 311 particularly at p 312 to p 313 of the report:

> A person who has a judicial duty to perform should disqualify himself from performing it if he has a pecuniary interest in the decision or if he has a bias which renders him incapable of being an impartial judge. This principle was stated by Bowen LJ in his judgment in *Leeson v General Council of Medical Education and Registration* (1889) 43 Ch D 366 at pp 384–385. In the same case, Fry LJ took a stricter view at p 390 as follows:
>
> > 'I think that it is a matter of public policy that, so far as is possible, judicial proceedings shall not only be free from actual bias or prejudice of the judges, but that they shall be free from the suspicion of bias or prejudice.'
>
> In a situation where a likelihood of bias is alleged, Lord Widgery LJ in *R v Altrincham Justices* [1975] 2 WLR 450 said:
>
> > 'It is enough to show that there is a real likelihood of bias, or at all events that a reasonable person advised of the circumstances might reasonably suspect that the judicial officer was incapable of producing the impartiality and detachment ... .'
>
> I think the correct view is also clearly stated in *Healey v Rauhina & Anor* [1958] NZLR 945 following *R v Camborne Justices, Ex p Pearce* alleged (other than pecuniary or proprietary bias) then there must be proved a real likelihood of bias and that reasonable suspicion of bias is insufficient. Thus, bare allegations (as done in the present case) are insufficient. A fortiori bare allegations before hearing had hardly commenced.

Although his Lordship Hashim Yeop Sani FJ had to decide on the issues of whether the Attorney-General was the head of the judicial and legal service, and whether the president or magistrate should disqualify himself from proceeding with a case on the ground that he belonged to a service headed by the Attorney-General, yet the principles distilled therein are germane and should be applied in the context of the present appeal. Eve J in *Law v Chartered Institute of Patent Agents* [1919] 2 Ch 276 at p 290 spoke of biasness in this way:

> ... a person who has a judicial duty to perform is disqualified from performing it if he has a bias which renders him otherwise than an impartial judge, or it he has so conducted himself in relation to the matters to be investigated as to create in the mind of a reasonable man a suspicion that he may have such a bias.

It is now trite law that in an application to set aside a decision on the ground of biasness, it is not necessary to prove that the judicial officer was biased. It is sufficient, in my considered view, to show that there is a real likelihood of bias or for that matter a reasonable person advised of the circumstances might reasonably suspect that the judicial officer was unable to produce the kind of impartiality and detachment which was expected of him. The correct test would be to ascertain whether there is an appearance of bias and not whether there is actual bias (*R v Liverpool City Justices; ex p Topping* [1983] 1 All ER 490 at p 494). I am constrained to say that this view seems to find support in the judgment of Lord Denning MR in *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577 at p 599 and this was what his Lordship said:

> ... in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit .... There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did in fact, favour one side unfairly. Suffice it that reasonable people might think, he did. The reason is plain enough. Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.'

Now, applying these principles to the forefront of my mind, I hold that when magistrate 'A' wrote that letter to magistrate 'B', there was an appearance of bias on the part of magistrate 'A' and the transfer of the appellant's case to magistrate 'B' was wholly justifiable in the circumstances. In *Manokaran & Anor v PP* [1979] 1 MLJ 262, Abdoolcader J had to consider the situation where the special president of the special sessions court transferred the two cases to himself. Here before me, magistrate 'A' as the transferor transferred the appellant's case to

magistrate 'B' as the transferee. It was therefore an entirely different scenario altogether. Be that as it may, Abdoolcader J castigated the special president of the special sessions court and the deputy public prosecutor in *Manokaran & Anor v PP* and this was what his Lordship said (see pp 264 to 265 of the report):

> How was the transfer made? All that is apparent on the record and from the submissions of counsel on both sides is that the appellants were called up before the special president, and the cases against them were dealt with virtually de novo notwithstanding what had transpired on the previous day before the other president and while these cases were still registered as sessions court cases. It is therefore abundantly clear that the special president acted suo motu and unilaterally in taking over these two cases. It is also significant that there is no order whatsoever appearing anywhere in the record of proceedings for the transfer of the two cases to the special sessions court.
>
> There are two provisions in the Subordinate Courts Act 1948 which are relevant on this aspect of a transfer but neither of which is applicable to the purported transfer of these two cases to the special sessions court. The first is s 104 of the Act which empowers a president or magistrate to transfer a criminal cause or matter to any other sessions court or magistrate's court which has jurisdiction to hear and determine the same. This section does not apply as the president who heard the case on 2 June, had jurisdiction and s 104 empowers a transfer by a transferor court whereas in these two cases there was in fact a purported transfer by a transferee court to itself. The other provision in the Act is para 3(2) of the Third Schedule thereto which empowers a sessions or magistrate's court on application or of its own motion to transfer any proceedings to another court of co-ordinate, jurisdiction. This provision cannot apply either as once again the transfer was purportedly effected by the transferee court to itself and not by the transferor court as should be the case and, in any event, it was not to a court of co-ordinate jurisdiction as the special president had wider powers than a president by virtue of the provisions of s 63(3) of the Act then in force.
>
> I should perhaps mention that after counsel on both sides had concluded their submissions before me and as was about to begin delivering judgment in this matter, the deputy public prosecutor sought leave to address me once again to submit, perhaps as a belated afterthought and by way of salvage although he had already agreed that the transfer of these two cases to the special sessions court was improper and illegal, that there was in fact no question of a transfer as the special president had jurisdiction to hear the cases. I then asked him how, if that was indeed so, this special president could sentence the first appellant to seven years imprisonment which was beyond the jurisdiction of the sessions court as such, and why it was necessary to regularise what took place by giving special sessions court case numbers to the cases after their conclusion, quite apart from the necessity and propriety of his hearing these cases which had already been dealt with only the previous day, whereupon he immediately said he would leave the matter to me, a supplication or formula or call it what you will which, with respect, has since become the stock answer and the standard and perhaps last refuge of the desperate who are unable to sustain or pursue an argument advanced and is only a euphemism for abandoning it.

On impartiality of the courts, Abdoolcader J had this to say in the same case, as seen at p 263 of the report:

> It is a matter of the gravest public policy that the impartiality of the courts of justice should not be doubted, or that the fairness of a trial should be questioned; otherwise, the bulwark of the liberty of the subject would be undermined.

I respectfully adopt the sage observations of Abdoolcader J in that case. At this juncture, it is germane to reproduce the short speech of Lord Hewart CJ in *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256 at p 259:

> ... it is not merely of some importance, but is of fundamental importance tha justice should not only be done, but should manifestly and undoubtedly be seen to be done.

and what magistrate 'A' did was merely to ensure that the corridor of justice was uncluttered and be seen to be transparent to everyone, especially to the appellant.

On independence of the judiciary, which must necessarily include magistrates and judges of the sessions courts, the interference by the police constable of magistrate 'A''s discharge of judicial duty must be frowned upon. The predominant role of the judiciary is to dispense justice impartially without fear or favour. The rule of law and the independence of the judiciary would strengthen the democratic framework of our government. The court should not act against the will of Parliament but instead should support it. That is how it should be. A judge of whatever rank, and this must include a magistrate, is required to render an honest, unbiased opinion based purely on the law and the facts. It is not a simple task. It demands a whole gamut of wisdom, conscience, absolute freedom from bias and prejudice and above all fairness. Judges too must not be receptive to influence, inducements, pressures, threats — be it direct or indirect. In short, competence and integrity are part and parcel of an independent judiciary. Magistrate 'A' must have been in a dilemma when the police constable approached him in regard to the appellant. The appellant too must be blamed for his brashness in thinking that magistrate 'A' would accede to the police constable's unwanton approach. Magistrate 'A' should be commended in transferring the appellant's case direct to magistrate 'B', a court of co-ordinate jurisdiction unlike what had transpired in *Manokaran & Anor v PP* — that was a course of action that would certainly strengthen our judiciary in the eyes of the public. Transparency is the catch phrase for our judiciary and it will remain so for a long time to come. Now, the crucial question to pose would be this: what did magistrate 'B' do when she receive the appellant's case? The appeal record showed that on the same day she promptly mounted the bench and caused the same amended charge to be read and explained to the appellant. It was recorded that the appellant had pleaded guilty and understood the nature and consequences of his plea. Magistrate 'B' then forthwith proceeded to convict the appellant. By way of a mitigation, the appellant prayed for a lenient sentence and the appeal record showed that the mitigation plea before magistrate 'A' was referred to by the appellant. Magistrate 'B' then imposed sentence of five years imprisonment with effect from the date of sentencing, namely 2 April 1997, and in addition ordered

A one year of police supervision. In my judgment, magistrate 'B' should proceed with the same rigmarole as did magistrate 'A' when the appellant was produced before her on that day. In other words, magistrate 'B' should handle the case afresh and follow closely the steps as explained in this judgment. For convenience, the steps may be tabulated as follows :

B (1) the same amended charge to be read and explained to the appellant;

(2) the plea shall be recorded;

(3) before a plea of guilty is recorded, magistrate 'B' shall ascertain that the appellant understands the nature and consequences of his plea and intends to admit, without qualification, the offence as alleged against
C him;

(4) a short summary of the facts must be presented by the prosecutor;

(5) when recording the facts, magistrate 'B' must record the appellant's admission of those facts or a denial of them;

D (6) magistrate 'B' must accept the guilty plea of the appellant before recording a conviction;

(7) mitigation plea to be recorded and considered; and

(8) sentencing.

Step (4) was not adopted by magistrate 'B' and she must have relied upon
E those facts as per exh P2 that was tendered before magistrate 'A'. In my judgment, magistrate 'B' should have directed the prosecution to give a summary of the facts once again before her and thereafter, she must follow step (5) and so on. In statutory form, the procedure to be followed by a magistrate before sentencing an accused who has pleaded guilty is set out
F in the CPC particularly s 173 (b) and (m)(2) thereof. These procedural requirements are mandatory and once an accused person appears before the magistrate, the magistrate has no choice but be bound in law to proceed with the trial in accordance with the CPC (*PP v Leonard* [1960] MLJ 13). In so far as magistrate 'A' was concerned, I was satisfied that he had complied with the mandatory guidelines set out by the then Federal
G Court in *PP v Leng Chow Teng* [1985] 1 MLJ 229 — of course up to the stage before he transferred the appellant's case to magistrate 'B' for sentencing. The present appeal revolves on the question of how to determine the validity of a plea of guilty. This seems to be the crux of the problem. Both parties argued at length on this point. The then Supreme Court in *Lee Weng Tuck & Anor v PP* [1989] 2 MLJ 143 sets out three
H guidelines to determine the validity of a plea of guilty and they may be stated as follows:

(a) the court must always be vigilant and ensure that the accused himself who wants to plead guilty;

(b) the court must ascertain with certainty that the accused understands the
I nature and consequences of his plea; and

(c) the court must also ascertain to its satisfaction that the accused intends to admit without qualification the offence alleged against him.

I have no doubts at all that both magistrates 'A' and 'B' have complied with these three guidelines but as I said earlier, the failure of magistrate 'B' to follow step (5) was fatal. It struck at the root of the procedural requirements as set out in the CPC.

For the reasons adumbrated above, I allowed the appeal. The conviction and sentence were accordingly quashed. The case to be remitted back before another magistrate of the Johor Bahru Magistrate's Court, other than magistrates 'A' and 'B', for trial. For expediency, the case is to be mentioned before that magistrate by today, preferably at 2pm. The bail that was granted to the appellant in the sum of RM3,000 is to be extended.

Appeal allowed.

Reported by Andrew Christopher Simon